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August 12, 2022

BY ELECTRONIC FILING

Hon. Lewis A. Kaplan
United States Courthouse
200 Pearl Street
New York, NY 10007

Re: *Kevin Spacey Fowler a/k/a Kevin Spacey v. Adam Vary*,
Southern District of New York, Case No. 22-mc-0063 (LAK);
Anthony Rapp v. Kevin Spacey Fowler a/k/a Kevin Spacey,
Southern District of New York, Case No. 20-cv-09586 (LAK)

Dear Judge Kaplan,

As Your Honor knows, I am counsel for non-party subpoenaed journalist Adam Vary. I write to request clarification of a specific aspect of the Court's August 9, 2022 order, Dkt. 222, 20-cv-9586 (the "August 9 Order").

Among the materials provided to the Court for *in camera* review on June 7, 2022 were two documents, on USB#1, that relate to an interview that Mr. Vary did of Kevin Spacey Fowler in or about 2014 concerning Mr. Fowler's Richard III tour (the "Richard III Documents"). For the Court's reference, the Richard III Documents can be found on USB#1, and are titled "Kevin Spacey – NOW – story" and "Kevin Spacey – NOW – transcript." The interview concerning Mr. Fowler's Richard III tour contributed to a *BuzzFeed* article by Mr. Vary published on March 7, 2014 (the "2014 Article"). A copy of the 2014 Article, which predates the article concerning Anthony Rapp by three and a half years, is attached to this letter brief. The Richard III Documents are a draft of the 2014 Article and a transcript of Mr. Vary's interview with Mr. Fowler for the 2014 Article. Both of the Richard III Documents are newsgathering materials because, although portions of the interview were published in the 2014 Article, the draft and the interview transcript are nonconfidential unpublished materials.

The Court's August 9 Order directs Mr. Vary to produce "documents regarding any interactions between Vary and Fowler," *id.* at 31; however, the Order also holds that documents on USB#1 (with non-applicable exceptions) are "protectable," and that Mr. Fowler "cannot overcome Vary's qualified privilege" as to nonconfidential newsgathering materials, *id.* at 24-27. It is, therefore, unclear whether Mr. Vary is required to produce the Richard III Documents from USB#1.

As the Court can tell from a review of the two Richard III Documents, they are not relevant to this case at all, and certainly do not meet the Second Circuit's heightened relevance standard for the disclosure of nonconfidential newsgathering material. August 9 Order at 24-27.

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Accordingly, we do not believe the Court intended for the Richard III Documents to be produced.

Before filing this letter brief requesting clarification, I conferred with Chase Skolnick, Esq., counsel for Mr. Fowler, about the issue raised herein, noting that if Mr. Fowler wanted Mr. Vary to produce the Richard III Documents that we would seek clarification from the Court. Mr. Skolnick stated that, since he cannot see the documents, he would not agree that they are irrelevant or should not be produced.

Mr. Vary respectfully requests that the Court clarify that the Richard III Documents do not need to be produced, and looks forward to the Court's guidance on this issue.

Respectfully submitted,



Jean-Paul Jassy
JASSY VICK CAROLAN LLP

Attachment: March 7, 2014 *BuzzFeed* article by Adam B. Vary titled: "How Kevin Spacey Is Bringing The 'House of Cards' Model To Shakespeare"

cc: Jennifer Keller, Esq.
Chase Scolnick, Esq.
Jay Barron, Esq.
Peter Saghir, Esq.
Meghan Fenzel, Esq.
David Korzenik, Esq.
Matthew Leish, Esq.